Supreme Court, U.S.
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No. 10-181

In The

SUPREME COURT OF THE UNITED STATES

In Re: Philadelphia Entertainment and Development Partners, L.P.

Petition Of: Eastern Pennsylvania Citizens Against Gambling, James D. Schneller

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A. Whether the Court may Remand the Case to the Pennsylvania Supreme Court to Bring Out the Reasons for Denying the Petition for Review ?

B. Resolution of Errors Of Law, and Reversal, are Requested, of a Highest State Court's Apparent Affirming of Denial of Intervention in a State Gaming Control Board application Proceeding.

C. Issues of Constitutionality of Pennsylvania Gaming Law Statutes and Regulations Are Requested to be Reviewed.

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To the Justices of the Supreme Court:

Petitioner James D. Schneller, representing himself, and Eastern Pennsylvania Citizens Against Gambling, request a writ of certiorari to the Supreme Court of Pennsylvania, and relief in the alternative, stating as follows :

I. JURISDICTION

The jurisdiction of the Court is invoked under 28 U.S.C. § 1257.

This petition is taken from a decision of the Supreme Court of Pennsylvania. The date on which the Supreme Court of Pennsylvania decided this case was February 3, 2010. The order denying rehearing of the decision was entered on April 21, 2010.

Petitioners have raised their objections and arguments in regard to the issues presented in this petition, in the proceedings below. Petitioners raised all issues including the within questions, in

the pleadings which they presented, making certain to preserve any issues, especially because of lack of hearing and failure of the respondents to address many of the issues in plaintiff's pleadings. Each issue in these proceedings was responded to by respondents or was afforded an opportunity for response by respondents.

II. PARTIES

Eastern Pennsylvania Citizens Against Gambling ("E.P.C.A.G.") is a community organization which opposes all infusion of gambling into Pennsylvania and actively opposes any applications or upgrades for casinos. E.P.C.A.G. opposes the implanting of casinos including because of the deleterious effects of casinos on local, and general, quality of life, and on the accepted family-rearing environment; and because of the overt characteristics of said implanting, including infliction of human suffering, economic irresponsibility, and open exhibiting of government bias, economic irresponsibility, and callousness. E.P.C.A.G. claims these put the Act well below the threshold of traditional, common sense, moral, and common law decency, and that Pennsylvanians experience an ongoing perception that lawmakers and the courts are participating in a special legislation, for special interests, which includes no real process for

considerations of the community, all of this a conflict with the state and federal constitutions. E.P.C.A.G., like most Pennsylvanians, is horrified by laws legitimizing easy credit, and the manner in which leaders leveraged the slots legislation, first on the backs of school districts, and thence, on the backs of college students needing loans.

The Pennsylvania Gaming Control Board is the Executive Agency established to administer all casino and related gambling in the state of Pennsylvania.

James D. Schneller is a principal of E.P.C.A.G. and a party, individually, in the proceedings below, who has also overseen the litigation as self represented petitioner.

The City Of Philadelphia is the nation's first city and the birthplace of the nation's liberty and government.

The City Council of Philadelphia is the legislative body of the government of the city of Philadelphia.

The Planning Commission of the city of Philadelphia is the body which reviews all land use and related legislation and policy, and certain fiscal policies, for the City of Philadelphia.

Philadelphia Entertainment and Development Partners, L.P. ("PEDP" , "Foxwoods") is a Pennsylvania casino operator entity which was granted a Category 2 slot machine facility license, by the Pennsylvania Gaming Control Board.

III. OPINIONS BELOW

The Pennsylvania Gaming Control Board decided this case in an adjudication and order entered September 3, 2009. (App. - p. iii)

IV. STATEMENT OF THE CASE

1) The Pennsylvania legislature, as approved by the Governor of Pennsylvania, passed in 2004 the Pennsylvania Race Horse Development and Gaming Act ("Act"), Act 71 of 2004 and subsequent amendments to the Act.

2) Respondent Philadelphia Entertainment and Development Partners, L.P. ("PEDP") was granted a Category 2 slot machine facility license, by the Pennsylvania Gaming Control Board ("Board", "Gaming Control Board"), on December 20, 2006,

for a waterfront location at Columbus Boulevard and Tasker Street in South Philadelphia, Pennsylvania.

3) PEDP failed to begin operation of their slot machine facility within one year of issuance of the license to them, and therefore due to limitations of time set out in the Act, petitioned the Board under 4 Pa.C.S. § 1210 for an extension of time in which to make slot machines available for customers.

4) Petitioners Eastern Pennsylvania Citizens Against Gambling ("E.P.C.A.G."), of 500 E. Lancaster Avenue #111d, Radnor, PA 19087, along with petitioner James D. Schneller, filed a petition to intervene in the proceeding.

5) Petitioners opposed the extension of time to PEDP and opposed the proposal beginning late in 2008, by PEDP, to place the licensed Category 2 slot machine facility at a new site, the site of the former Strawbridge & Clothier Department Store at 8th Street and Market Street, in center city Philadelphia, filing a petition to intervene with the Pennsylvania Gaming Control Board.

6) The Board, subsequent to hearing held August 28, 2009, with leave denied to petitioners and other parties to testify, denied in orders dated September 2, 2009, the petition of E.P.C.A.G. to intervene, approved PEDP's petition for extension of time to

activate slot machines, denied petitions of certain legislators to intervene, with leave to proceed as amicus curiae, and denied the petition to intervene of Keystone Development Partners, the Trump-owned firm earlier denied a license for a facility proposed for another site near central Philadelphia.

7) Meantime, the Philadelphia City Council ("City Council"), subsequent to recommendations for approvals by the Philadelphia Planning Commission, passed bills Nos. 80741 and 80742, and then Nos. 90294 and 90295,[1] delineating the boundaries under the Philadelphia Zoning Code ("Zoning Code") of a new central Philadelphia Commercial Entertainment District, and creating an approval process, under the Zoning Code, which causes the approval process for land development in Commercial Entertainment Districts, those being districts intended to contain gambling facilities pursuant to the Act, to hinge solely on approval by said Planning Commission, rather than recommendation by the Planning Commission followed by City Council vote and mayoral approval. (Phila. Municipal Code. Chapter 14-400 Commercial Entertainment Districts, §403. Procedures for the Establishment of a Commercial

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[1] Bill No. 90295 amended the district boundary initially changed in Bill No. 80741

Entertainment District) Equally controversial changes are a new allowance for back-out off street loading docks (Bill No. 90294) and additional roof signage (Bill No. 80742) in this district, which is Philadelphia's most congested, and, like the central city skyline, traditionally free of roof signage.

8) Likewise, action was taken on bill No. 90170[2], which was a first of many steps taken to amend the Zoning Code to establish a Delaware River Riverfront Overlay district, with the stated purpose of stabilizing development and permit activity for said district (which includes the location of the PEDP's proposed casino). Promulgation of the steps towards said Overlay had finally resulted from comprehensive studies and long awaited efforts to legislate sensible use and development of the sliver of land facing the Delaware River along an approximately 3 mile stretch extending north and south along the river from center city Philadelphia. The land has been poorly maintained, and in great part an eyesore, for decades, much of it apparently held in that condition pending the instant casino legislation.

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[2] Bills Nos. 80741, 80742, 90294 and 90295 are reproduced in section VI. Bill No. 90170 is not included due to constraints of space and time.

9) The Mayor of Philadelphia, Mayor Michael Nutter, signed said bills, or in some cases, allowed deemed approval through passage of time.

10) Petitioners Eastern Pennsylvania Citizens Against Gambling and James D. Schneller, opposed, at the public meetings of said state and city bodies, in the public forum, and in numerous diligent ways, the stated promulgation of legislation and approval processes, participating in hearings before the Philadelphia City Council and meetings of the Philadelphia Planning Commission pertaining both to review of the proposals, approvals necessary, and proceedings on rezoning of the center city location for the purpose of enabling development of the slots parlor. Petitioners were not permitted testimony, evidence, nor argument pertinent to the petition to intervene, before the Gaming Control Board.

11) Petitioners filed a petition for review of the said decisions, with the Supreme Court of Pennsylvania on October 5, 2010, pursuant to 42 Pa.C.S. §721, 42 Pa.C.S. §725, section 9 of Article V of the Constitution of Pennsylvania , 4 Pa.C.S.§ 1204, 4 Pa.C.S.§ 1506, and 4 Pa.C..S. §1904 , which establish original jurisdiction of the Pennsylvania Supreme Court over appeals from decisions "involving the approval, issuance, denial or conditioning of casino licenses" 4 Pa.C.S.§ 1204, over "appeals of a final order, determination or

decision of a political subdivision or local instrumentality involving zoning, usage, layout, construction or occupancy, including location, size, bulk and use of a licensed facility" 4 Pa.C.S.§ 1506, and over any challenge to, or declaratory judgment concerning, the constitutionality of the Act. 4 Pa.C..S. §1904. Despite petitioners' inclusion of all parties in the caption, the Pennsylvania Supreme Court prothonotary directed that the "Only order at issue is the order denying intervention dated 9/1/2009, docketed 9/2/2009 and postmarked 9/3/2009," to which petitioners objected and raised their right to include all decisions in the appeal, as was already stated in the petition for review. Petitioners claimed that they could never appeal the promulgations of amendments to municipal law of the Philadelphia City Council and Philadelphia Planning Commission, until said decisions resulted in a justiciable controversy, and so their appeal was diligent and timely, because they waited for the first such threshold event, at which time they appealed within 30 days. Decisions appealed from in the petition for review, stood, before the time of filing, as interlocutory decisions that either a) were expressly unappealable, or b) that tolled the time for appeal and at the same time were not final decisions under the law.

12) PEDP, the Gaming Control Board, and the City of Philadelphia, filed letters of intent to not file answers. The Supreme Court of Pennsylvania denied the petition for review on February 3, 2010.

13) Petitioners filed a motion for "reconsideration, clarification, and amendment" of the order denying the petition for review, raising issues including that the deciding Court had made no findings nor conclusions, despite the petition's raising of timely and preserved issues, including issues of unconstitutionality and patent unfairness, and the instant issue of which of the three orders stated as part of the appeal, was included in the decision, where one of the two municipal code amendments had, in fact, been appealed in a prior petition for review, at a time falling within even the strictest limitation of time, which appeal remained pending at the time of filing of this appeal, causing a tolling and corresponding timeliness in this case. (Supreme Court of Pennsylvania No. 11 EM 2009, E.P.C.A.G. et al v. City of Philadelphia, City Council of Philadelpha, Planning Commission of the City of Philadelphia : In Re: HSP Gaming LP, petition to file petition nunc pro tunc denied, motion for reconsideration filed 6/24/10)

V. REASONS WHY CERTIORARI SHOULD BE GRANTED

Petitioners request a writ, and remand, and claim jurisdiction under 28 U.S. § 1257 because a) the validity of a statute of a State is drawn in question on the ground of its being repugnant to the Constitution, and b) egregious error calls for exercise of the Court's authority.

A. Remand is Requested

The sort of legal issues present in the appeal, are regularly addressed in detail by the Circuit Courts and the Pennsylvania Supreme Court in their decisions, including those handed down regarding matters founded on the Gaming Act.

In this case the issuance by the Pennsylvania Supreme Court of a one sentence order of denial is inexplicable, unusual, and vague. It feasibly occurred because there is insufficient reason for the Order, causing the Court to not worsen their situation by writing easily refuted reasons, but leaving the next highest Court to wonder what the reasons for denial actually are. This is supported

by the fact that the appellees, PEDP, the Gaming Board, and the City of Philadelphia, did not file answers, choosing rather to file letters of no answer.

Likewise, all of the issues discussed in this petition have been denied an adjudicating in full or an adjudicating on the basis of a casewide adjudication and, regardless, the deciding Court has given no indication of their reasons for denial of the petition for review.

Petitioners would also claim that the failure to make findings and conclusions has been made with intent to delay, intent to camoflogue, and/or intent to await this very petition in order to gauge petitioners' intent and petitioners' course of action.

Due to the statutory imposition of jurisdiction in the Pennsylvania Supreme Court, the Court is the court of last resort, and that in a field that is fraught with snares, ethical considerations, and new ground in agency procedure, further supporting issuance of a writ and other relief.

The Court has remanded such a cause to the highest state court for such further proceedings as it may deem appropriate to clarify the record. Philadelphia Newspapers, Inc., Et Al. V. Jerome, Judge, 434 U.S. 241; 98 S. Ct. 546; 54 L. Ed. 2d 506, citing California v. Krivda, 409 U.S. 33 (1972).

B. Resolution of Errors Of Law and Reversal are Requested, of a Highest State Court's Apparent Affirming of Denial of Intervention in a State Gaming Control Board application Proceeding.

The Pennsylvania Gaming Control Board has decided so erroneously as to warrant an exercise of the court's authority, and has decided in conflict with the United States constitution. The failure of the reviewing Court to explain it's one sentence denial accentuates this question.

Intervention

Petitioners sought intervention in the PEDP petition for extension of time, especially because no other party officially participating in the Foxwoods process represents the interests that are defended by E.P.C.A.G. and other opponents to Foxwoods. E.P.C.A.G. claims that the interests of the Gaming Control Board and Foxwoods are more closely aligned with each other, rather than exhibiting the adversary stances that would give the citizens of the metropolitan area a realistic and democratic decision process.

Petitioners claimed numerous reasons for intervention and denial of extension of time,

including the ever increasing visage of lack of integrity in the gaming license process; irresponsible, false claims by politicians of a quick fix for municipal and school budget shortfalls, selfish and costly side efforts by Foxwoods to gain the center city location, oversaturation of the Philadelphia area with gambling rather than optimal geographical distribution as would be the normal course of events[3], detraction to neighborhood and regional business economies, including dollars spent by tourists ; further overt mediocrity imposed on the Delaware waterfront, the lack of a workable plan for counteracting expected harms to citizens' and businesses' liberty and comfort, e.g. traffic flow, transportation, environment, aesthetics, and many other considerations of that nature; failure of PEDP to supply any real, practical, plan for habituation, family strife, addiction, theft, vice, abuse, and embezzlement, and proximity of these to dozens of neighborhoods nearby; inflicting upon the birthplace of liberty and center city business districts, or in the alternative the Philadelphia sports complex, both of which are noticeably family-oriented, of a monument to vice and a daily eyesore and bad example; unethical

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[3] Philadelphia Parx casino on the north, and Harrah's on the south, would be claimed to be overwhelmingly sufficient by petitioners.

aggrandizement of a select group of politicians in a milieu of unrealized benefit to the State; the failure of Foxwoods to prove that they deserve more time, because they had reason to believe that lawsuits would slow the process, and they knew the risk of seeking to change the location of their proposed facility and the level of controversy that would arise against the proposed location, as well as the controversy that would reawaken should they return for the original location; evidence showing that costs to the State from a gambling facility are at least twice what the facility would bring in revenue, and the underlying human toll to families and individuals; deleterious effects of a gambling facility on citizens at the poverty level, including failure to implement strong laws regarding slots facilities' practices in cashing checks, wire payment, and payment in kind.

James D. Schneller pled the substantial and immediate harms including the relevant ones stated herein, that would be directly inflicted on him and on sub-classes of citizens as a direct result of issuance of any casino license, including the fact that respondent did not show any real plan for counteracting detriment to the comfort, transportation, environment, aesthetics, and all considerations of a local or zoning nature.

As discussed in the next question, the Board's decision to not grant intervention to E.P.C.A.G. is carries with it the legal implication that citizen's groups may not intervene in casino application proceedings, which is outlandish and primitive in the realm of accepted practice and fair administration of law. Likewise the denial of intervention carries the open message that the Board may preclude extensive evidence through a wave of the intervention wand, which is overt deprival of rights to due process and access to tribunal.

Erroneous Law and Findings

It is necessary to inform the Court, for the purposes of the relief requested, that the findings of the Board are erroneous.

As an example, the statement that petitioners alleged that " casinos are , in general, havens of crime." (Appendix p. vi) ignores the concurrent aspects of increase in crime in neighborhoods, some families, the nature of the crime and why it should be prevented, the multitude of inflicted harms and ills not constituting crime, and so on.

The Board has avoided the fact that the petition addresses either location proposed for the

casino, instead veering to the location more advantageous to their position. The Board has erred and abused discretion in continually referring to the proceedings as solely related to the location on Delaware Avenue, and then at hearing adjudicating the matter of the center city location at length, and then in the Adjudication concluding that the license to PEDP is limited to the Columbus Boulevard location.

Another error is the Board's stating the hearing to be in regard to one location and then deciding the other location with references to that location present throughout the hearing, presented a spectacle of juggling with bias and intent to prejudice proceedings and appeal.

Equally alarming is the failure of the Board in the adjudication to discern and find that petitioners opposed both the riverfront location and the aggressively sought center city location, instead avoiding the twofold nature, and the co-existing Municipal Legislature issues, completely, in favor of vagueness, and thus more advantageous to posture taken in their order.

Erroneous findings of fact are abuse of discretion because they make it necessary to make lengthy discussions, especially by unrepresented parties, in order to bring reviewing Courts to an

understanding of the circumstances, and to overcome prejudice from the start.

The Board has also completely avoided the question of whether the association E.P.C.A.G. may voice the objections of individual members which are not abstract nor common to the populace as a whole and which will cause them harm. The adjudication avoids this question. Petitioners even claimed a substantial interest pursuant to aggrievment under *Biester* taxpayer status. Application of Biester, 409 A.2d 848, 852 (Pa. 1979).

Petitioners are further, erroneously subjected to a finding that their pleading is insufficient. Petitioners sought leave to amend, in their replies to responses to the petition. The Board egregiously seeks to determine the action purely by the initial pleading, without hearing, and without leave to amend, and then erroneously concludes that petitioners "failed to meet nearly every requirement of the intervention requirements," all of this despite petitioners' allegations clearly and concisely admitting, denying, "otherwise addressing," controverting, and fully advising of the issues taken to the underlying petition, and at the same time "demonstrating the nature of the

alleged interest" as intended by the law and the Board's Rules.[4] (Appendix p. x)

Again, as claimed in the preceding section, abuse of discretion has been inflicted. This is supported by errors in law, misapprehension of fact, and failure to address many issues of law and fact.

Therefore, especially in light of the deprivals of constitutional rights shown, and the decisions in conflict with the United States constitution properly before the court, as discussed in the next section, petitioners request reversal, remand with

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[4] Likewise, discovery even of docketed pleadings can be hampered by the Board. June 23, 2009 -- The Gaming Control Board appealed the Order of the Pennsylvania Office of Open Records to release records of Valley Forge Convention Center Partners Inc. to E.P.C.A.G. that had been requested by E.P.C.A.G. subsequent to the Board Bureau of Investigation and Enforcement's statements that pertinent data had been demanded of Valley Forge, and produced. A license was later issued. The appeal has inexplicably been designated as sealed and even the docket is unavailable including on the Pennsylvania appellate dockets web page.

instructions for hearing in the state agency, and review of any issue deemed worthy or appropriate by the Court.

C. Issues of Constitutionality of Pennsylvania Gaming Law Statutes and Regulations Are Requested to be Reviewed.

Petitioners request jurisdiction and review because the validity of certain State statutes are drawn in question on the ground of their being repugnant to the Constitution, treaties, or laws of the United States.

Petitioners have preserved their claims of deprivals of rights guaranteed under the U.S. Constitution, all of which are of great public interest, mature, and worthy of review. With greatest caution as to stating too many issues in one petition for writ of certiorari, these questions include :

The Board's (and Pennsylvania Supreme Court's) decision, and the underlying Rules, conflict or create a catch-22 with the constitution, in conjunction with the Pennsylvania Supreme

Court decision in Society Hill Civic Ass'n v. Pa. Gaming Control Bd., 593 Pa. 1 (2007) that entities seeking party status in appeals from Board decisions were denied standing because they did not seek to intervene, citing Citizens Against Gambling Subsidies, Inc. v. Pennsylvania Gaming Control Board, 916 A.2d 624 (Pa. 2007) (petitioners "did not pursue intervention to achieve party status in the administrative proceedings; . . when procedures for intervention were available." Petitioners' diligent efforts to intervene apparently cause standing for them in this appeal. But the Board also has, under Society, the power to decide whether a community group may appeal their decision as a party or as a party-denied, as they have attempted in this case, which is unfair, and in conflict with principles of due process and equal treatment. Pa. Const Art. 1 s. 7, Art. I, s. 11, USCA Const. Amend. V, Amend. XIV

Petitioners, further, request review of a claim of repugnancy to the constitution that is inflicted by section 1204 of the Act, which declares that "the Supreme Court shall affirm all final orders, determinations, or decisions of the board involving the approval, issuance, denial or conditioning of a slot machine license unless it shall find that the board committed an error of law or that the order, determination or decision of the board was

arbitrary and there was a capricious disregard of the evidence." 4 Pa.C.S.§1204. Petitioner requests review of this claim which was sufficiently preserved for purposes of this petition by way of petitioner's repeated citation of Society Hill and voluminous discussion of constitutionality of the Act and it's effective stringency, deprival of due process and access to Courts, and unequal protection. In short, the Supreme Court is the Court of last resort and should not be specially imposed nor biased in derogation of the prohibition of bills of attainder and requirements for equal protection.

Petitioners have claimed that the group of intervention Rules, and the unlawfully unpublished Regulations regarding Public Hearings, especially when taken together, are invalid because they are over-restrictive, arbitrary, and overtly preventive of due process and full and means to full and fair adjudication of license application matters. As discussed above, The Board, in utilizing these rules, has, under Society, the power to decide whether a community group may appeal Board decisions, which is unfair, and in conflict with principles of due process and equal treatment. Pa. Const Art. 1 s. 7, Art. I, s. 11, USCA Const. Amend. V, Amend. XIV. The Supreme Court presumes that the Gaming Control Board intended its regulations to be constitutional. 1 Pa.C.S.A. §

1922(3). Pocono Manor Investors, LP v. Pennsylvania Gaming Control Bd., 927 A.2d 209, 592 Pa. 625, Sup.2007 Intent of Constitutionality is respectfully claimed to be unworthy to sway a claim of special interest legislation and/or the abundance of repugnancies to the Constitution (and State constitution) evident in this case.

Petitioners have also challenged the constitutionality of the regulations regarding standards to be applied for intervention, in Gaming Board matters, discussed in part above, as arbitrary, impeding to full and fair hearing of any given application, granting of bias to special interests, and arbitrarily and invalidly overrestrictive, to the point of being uniformly in conflict with our constitutions including United States Constitution Article IV Sections 2 and 4, Article 6, and Amendments V, IX, X, and XIV, Pennsylvania Constitution Article I Sections 1, 3, 4, 7, 8, 11, 26, 27 Article IV Section 9, and the .

The requirement that "Except when the Board determines that it is necessary to develop a comprehensive evidentiary record, the participation of a person granted the right to intervene in a proceeding will be limited to the presentation of evidence through the submission of written statements attested to under oath," 58

Pa.Code §493a.12(g), appears to be interpreted by the Board as precluding hearing for sworn evidence regarding the precursor, the petition to intervene. Such is, regardless, in direct conflict with accepted practice and causes to citizens deprivals of due process, access to the tribunal, and especially unequal protection, where proponents of casino applications and actions are granted time in the realm of hours to submit testimony. All of the within claims of unequal protection would be claimed on the various sub-classes of citizens claimed by petitioners, including the religious and the gambling-addiction prone.

On the municipal level, the amendment giving the Philadelphia Planning Commission sole authority over decisions regarding Commercial Entertainment Districts is claimed to be invalid and unconstitutional for many reasons, including that the mandate under the Charter to the Planning Commission is clearly one of advisory function alone. E.P.C.A.G. claims in the appeal that removal of oversight of the City Council over Commercial Entertainment District matters, works against the City Charter and against constitutional principles of balance of power, transparency, and fairness.

Petitioners have claimed that the second section of Bill No. 090294 is invalid as it causes

hazardous conditions and a public nuisance, and unconstitutional because it was passed in a manner lacking in due process due to the overwhelming nature of it's effects.

Petitioners claim that the Act and the above amendments to municipal ordinances are invalid and unconstitutional in their conflict with the intent of Federal, State and Municipal law attempting to eradicate illegal and abusive lending, including Philadelphia Code, Title 9. Regulation Of Businesses, Trades And Professions, Chapter 9-2400. Prohibition Against Predatory Lending Practices, enacted recently because of severe levels of such practices evident in the Philadelphia community.

Petitioners have alleged as unconstitutional the fact that the Act, other than in certain general language, makes no provision for consideration and objection by adjoining communities of any of the negative aspects likely to occur from license approval, and that the amending out of 4 Pa.C.S. §1506 a 60 day comment period for local government and consideration by the Board of local zoning ordinances is a "zoning eminent domain" which treads unconstitutionally on numerous rights of citizens, in the name of an overreaching executive and judicial branch, in the

interests of an unintended type of business. Pennsylvania Constitution Article I Sections 1, 3, 4, 7, 8, 11, 26, 27 Article IV Section 9, and the United States Constitution Article IV Sections 2 and 4, Article 6, and Amendments V, IX, X, and XIV

Petitioners would argue further, their claim that the Gaming Act was intended to distribute facilities geographically for optimization of tax revenue, yet current enablement reveals an invalid and unconstitutional failure of the Act to fully address it's stated intent. There are evident, pathways for the clustering of casinos for purposes of saturation, that might or might not, be later remedied, after a region has lost it's initial lustre, but where thousands in the meantime had been inflicted with habituation and addiction and all the related harms.

Petitioners claim deprivals to rights in other areas, and overall, as a result of the Act and/or the decisions of the Gaming Board and the Pennsylvania Independent Regulatory Review Commission. The express track effect, and the infusion of gambling itself, is in derogation of the Pennsylvania Constitution Article I Sections 1, 3, 4, 8 and 11, and the United States Constitution Article IV Sections 2 and 4, Article 6, and Amendments V, IX, X, XIV, and the

implementation of legalized gambling without a public referendum nor transparency, public approval, nor public participation are conflicting with State and Federal constitutional guarantees. The absence in the Act of provisions for interstate planning , and the apparent absence of direct involvement by law enforcement agencies in the screening process [5], are a deprival of rights including to liberty, and to defend life, liberty, property, and to fair, order-enhancing government.

Petitioners would argue, despite any seeming lateness of the claim, the traditional and ethical stance of the founders and succeeding generations of lawmakers and jurists, that must not succumb to the overtures of greed and fast cash. Laws of Congress and the states which are clearly based on the illegality and unacceptability of gambling continue to be enforced on case-by-case bases, and such laws exhibit in their entirety the timeless and honorable intent of leaders to protect their constituents from what will always be a hollow and one-sided transaction. 18 U.S.C. §§ 1511, 1955 (1971); Act of October 15, 1970, Pub.L. No. 91-425, Tit. VIII, §§ 802(a), 803(a). 84 Stat. 936-40. Section 1511 prohibits conspiracies to facilitate an illegal gambling business by means of the obstruction of

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[5] The Pennsylvania State Police claim they cannot participate in the screening process under the letter of the law.

the enforcement of local laws. Section 1955 prohibits the conducting of an illegal gambling business. Pennsylvania gambling statutes 18 Pa.C.S. § 5514 et al. See also 18 Pa. C.S. § 5302 . Wagering or speculating on official action by public servant; Pennsylvania Bingo Law, 10 P. S. § § 301—308.1, stating in Section 302, entitled legislative intent, that " . . The Legislature recognizes the possibility of association between commercial gambling and organized crime, and wishes to *discourage commercialization of the game of bingo*; prevent participation by organized crime and prevent the diversion of funds from the purposes herein authorized. " (emphasis added.)

Essentially the Commonwealth of Pennsylvania Assembly's, and all three branches', decision to permit widespread gambling, and policy of permitting only certain select citizen's right to offer such, has been made outside of the domain intended by the U.S. Constitution and the Pennsylvania Constitution. Government could be said to be aiding and abetting an illegal and unconstitutional gambling operation, along with the accompanying results including blight and business failure, addiction, habituation, social ills, criminal activity, drugs, loan abuse, and prostitution. This has occurred in a scenario commonly known to residents as agreements among the three branches to increase the

recompense of the Supreme Court in exchange for inclusion in the Gaming Act, of the provisions included for exclusive appellate jurisdiction in that Court. See Common Cause and League of Women Voters v. Commonwealth, 558 F.3d 249 (3d Cir 2009). (claim of derogation of separation of powers and trading of judicial decisions in return for the legislature's funding the state judiciary dismissal for lack of standing, affirmed) The scenario in Common Cause was a precursor to the well publicized events surrounding the passing of the Gaming Act in 2004.

Thus, through unconstitutional laws, unconstitutionally enacted, the general and time-tested tenet that gambling leads to a multiplicity of harms and ill effects, and is otherwise and fully accepted to be worthy of stifling, has evolved into an ability of government to designate which parties may utilize an unproductive and overall unyielding "game" for profit, with concurrent and equally unethical donating to campaign contributions resulting, along with clear signals that government has a right to act unethically, such as widespread news reports that various lawmakers have been steered to rigged machines by casino staff in order to reap large wins at certain Pennsylvania casinos.

To create an image of acceptability, leaders extol gambling and their own ability to profit, and

known organized crime figures, public figures, and judges unabashedly maintain their requested levels of ownership.

VI. CONCLUSION

The appeal in reality offered a strong instance of multiple error causing manifest injustice, including to petitioners and to classes of citizens as well as the community as a whole.

There is, in the contested Orders, a furthering of deprival of access to justice, remedy for injury, and deprival of property to plaintiffs, in derogation of the United States Constitution. Injustice and a form of imposed rule for a special interest is apparent. To perform its high function in the best way, justice must satisfy the appearance of justice. In re Murchison, 75 S.Ct. 623 (U.S.Mich.,1955) Access to the courts encompasses all the means a defendant or petitioner might require to get a fair hearing from the judiciary on all the charges brought against him or grievances alleged by him. Com. ex rel. Matherly v. Frame, 21 Chest. 283 (Pa.Com.Pl.,1973) Abuse occurs where actions are taken that are intentional or "motivated by bias, bad faith, or partisan or personal motives unrelated to the merits of the matter before it."

Rogers v. Bucks County Domestic Relations Section, 959 F.2d 1268, 1277 (3d Cir.1992).

Petitioners, for the above reasons, respectfully request an order granting certiorari over this case, and review of the orders entered in the Pennsylvania Supreme Court, so that a fair and just determination may be made.

Petitioners also request remand with instructions to amend the order or orders to include findings or conclusions, to include a statement of whether petitioners' constitutional claims have been addressed, for an evidentiary hearing in the agency, or such other action deemed worthy by the Court.

James D. Schneller pro se
500 East Lancaster Avenue # 111d
Radnor, PA 19087

Date: July 20, 2010 .

VII. TEXTS OF PERTINENT STATUTES

City of Philadelphia

BILL NO. 080741
Introduced October 16, 2008
Councilmember DiCicco
Referred to the Committee on Rules
AN ORDINANCE To amend the Philadelphia Zoning Maps by changing the zoning designations of certain areas of land located within an area bounded by Eleventh Street, Filbert Street, Tenth Street and Market Street.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS.

SECTION 1. Pursuant to Section 14-103 of The Philadelphia Code, The Philadelphia Zoning Maps are hereby amended by changing the zoning designations of certain areas of land within an area bounded by Eleventh Street, Filbert Street, Tenth Street and Market Street, from the existing zoning designations indicated on Map "A" set forth below to the zoning designations indicated on Map "B" set forth below.

SECTION 2. This Ordinance shall become effective immediately.

MAP A - Existing Zoning [omitted]

MAP B - Proposed Zoning [omitted]

City of Philadelphia

BILL NO. 080742
Introduced October 16, 2008
Councilmember DiCicco
Referred to the Committee on Rules
AN ORDINANCE
Amending Chapter 14-400 of The Philadelphia Code, entitled "Commercial Entertainment District," by adding provisions relating to proposed projects in the Center City area and relating to public art, by providing for revised effective dates, and by making technical changes, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 14-400 of The Philadelphia Code is hereby amended to read as follows:
CHAPTER 14-400. COMMERCIAL ENTERTAINMENT DISTRICT.
* * *
§ 14-406. Area Regulations. *In the area bounded by Sixth Street, Broad Street, Chestnut Street and Arch Street, the Area Regulation provisions of §14-305(4), the Floor Area Regulation provisions of §14-305(8), §14-305(9), and §14-305(10), and the Retail Space provisions of §14-305(12) shall apply as if the underlying area was designated as 'C-5'*

Commercial. In all other areas, the following provisions apply:

* * *

§ 14-407. Height Regulations. *In the area bounded by Sixth Street, Broad Street, Chestnut Street and Arch Street, the provisions of §14-305(7) shall apply as if the underlying area was designated as 'C-5' Commercial. In all other areas, the following provisions apply:*

* * *

§ 14-408. Off-Street Parking. *In the area bounded by Sixth Street, Broad Street, Chestnut Street and Arch Street, the provisions of §14-305(13) shall apply as if the underlying area was designated as 'C-5' Commercial, except that any such C-5 Commercial parking requirements in this area may be met by providing parking spaces in a lot or structure within one thousand (1000) feet of the boundary of an area designated as a Commercial Entertainment District. In all other areas, the following provisions apply:*

* * *

§ 14-410. Signs.

(1) For uses specified in § 14-405(1)(a) through (j), signs shall be permitted in accordance with the following limitations and conditions:

* * *

(e) Signs that are freestanding structures on the ground shall not exceed 40 feet in height, measured from the average level of ground of the

lot to the top of said structure, *except in the area bounded by Sixth Street, Broad Street, Chestnut Street and Arch Street in which case signs that are freestanding structures shall not be permitted*;

* * *

(2) Accessory signs permitted with Art Commission Approval. In addition to the permitted signs as set forth above, the following signs may also be permitted, provided that the Art Commission has approved such signs:

(a) *Except in the area bounded by Sixth Street, Broad Street, Chestnut Street and Arch Street,* [O]one free-standing accessory sign, not exceeding forty (40) feet in height above the average street level on which it fronts, with no more than two sign faces of one thousand two hundred (1200) square feet each may be erected for each street frontage of the district, provided that more than one sign may be erected along a single street frontage so long as the total number of signs does not exceed the number of signs permitted in the district;

(b) No more than two roof signs or signs on top of a marquee, *each* with no more than two sign faces of no more than three hundred (300) square feet *for* each *sign face*. Such signs shall be building identification and logo signs only. Within 2000 feet of the Delaware River, the top of each such sign shall not extend more than twenty (20) feet above the roof level upon which it sits;

(c) In addition to the signs allowed above, *except in the area bounded by Sixth Street, Broad Street, Chestnut Street and Arch Street,* [O]one additional freestanding sign for each 80,000 square feet of District Area shall be permitted under the following conditions:

* * *

§ 14-411. Design Review Submission Requirements.

* * *

(5) Public Art. A public art requirement is being imposed as a mechanism to expand and enrich the public environment and to create buildings and public spaces that are designed and executed with diverse and high quality materials, activities, and furnishings. It is intended to allow for the broadest definition of public art and encourage imaginative interpretation of media. In order to comply with this subsection, all of the following conditions must be met:

* * *

(g) Public Art shall not be required under this section for interior alterations in existing structures if said alterations apply directly to retail or restaurant uses not accessory to a licensed gaming facility.

* * *

Explanation:
[Brackets] indicate matter deleted.
Italics indicate new matter added.

City of Philadelphia

BILL NO. 090294
Introduced April 16, 2009
Councilmember DiCicco
Referred to the Committee on Rules
AN ORDINANCE
Amending Chapter 14-400 of The Philadelphia Code, entitled "Commercial Entertainment District," by amending Section 14-403 of The Philadelphia Code, entitled "Procedures for the Establishment of a Commercial Entertainment District," by amending the procedure by which a Plan of Development is approved or amended; and amending Section 14-409, entitled "Off-Street Loading," by adding provision relating to proposed projects in the Center City area, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:
SECTION 1. Section 14-403 of The Philadelphia Code is hereby amended to read as follows:

§ 14-403. Procedures for the Establishment of a Commercial Entertainment District.
(1) Council shall designate, by ordinance, such Commercial Entertainment
Districts in such areas as Council deems appropriate. For each such District, such

designations shall become effective upon the adoption of an ordinance designating the district boundaries; and the approval by [Council] *the Commission pursuant to subsection(2)* of a Plan of Development for the District. Upon the designation becoming effective, the underlying zoning classification for all lots within the District shall be superseded, and no permits shall issue for any use within the District other than as permitted by the approved Plan of Development and this Chapter.

(2) Review and approval of a proposed Plan of Development. The Commission shall *approve* [submit to the Council for its consideration] a proposed Plan of Development for a Commercial Entertainment District *or any proposed amendment to a previously approved Plan of Development* if the Commission finds that the Plan is consistent with the purposes of such a District, is in compliance with the provisions of this Chapter, and is otherwise appropriate in terms of scale, density, accessibility and design for the neighborhood.

* * *

(4) [Council approval of a Plan of Development shall be presumed if Council fails to approve by ordinance, disapprove by ordinance, or table consideration of a proposed Plan by the later of (i) 45 days after submission by the Commission of a proposed Plan to the Council or (ii) the fifth Council meeting after submission by the

Commission of a proposed Plan to the Council.] In the event the owner of a lot within a District submits a proposed Plan to the Commission and the Commission fails to approve, disapprove or table consideration of it within 45 days after submission, *it will be deemed approved by the Commission* [the proponent may submit the application directly to the Council and it will be deemed submitted to the Council by the Commission].

* * *

SECTION 2. Section 14-409 of The Philadelphia Code is hereby amended to read as follows:

§ 14-409. Off-Street Loading.

* * *

(2) The off-street loading areas must be designed in such a manner that all service vehicles enter and exit the facility in forward gear, *except in the area bounded by*
Sixth Street, Broad Street, Chestnut Street and Arch Street.

* * *

Explanation:
[Brackets] indicate matter deleted.
Italics indicate new matter added.

City of Philadelphia

BILL NO. 090295
Introduced April 16, 2009
Councilmember DiCicco
Referred to the Committee on Rules
AN ORDINANCE
To amend the Philadelphia Zoning Maps by changing the zoning designations of certain areas of land located within an area bounded by 11th Street, Filbert Street, 8th Street and Market Street.
THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:
SECTION 1. Pursuant to Section 14-103 of The Philadelphia Code, The Philadelphia Zoning Maps are hereby amended by changing the zoning designations of certain areas of land within an area bounded by 11th Street, Filbert Street, 8th Street and Market Street from the existing zoning designations indicated on Map "A" set forth below to the zoning designations indicated on Map "B" set forth below.
SECTION 2. This Ordinance shall become effective immediately.

MAP A - Existing Zoning [omitted]

MAP B - Proposed Zoning [omitted]

APPENDIX

Appendix ii

IN THE SUPREME COURT
OF PENNSYLVANIA
EASTERN DISTRICT

IN RE: PHILADELPHIA ENTERTAINMENT AND DEVELOPMENT PARTNERS, L.P. NO. 159 EM 2009

PETITION OF: EASTERN PENNSYLVANIA CITIZENS AGAINST GAMBLING AND JAMES D. SCHNELLER

ORDER

PER CURIAM

AND NOW, this 3rd day of February, 2010, the Petition for Review is DENIED.

IN THE SUPREME COURT
OF PENNSYLVANIA
EASTERN DISTRICT

IN RE: PHILADELPHIA ENTERTAINMENT AND DEVELOPMENT PARTNERS, L.P.

NO. 159 EM 2009

PETITION OF: EASTERN PENNSYLVANIA CITIZENS AGAINST GAMBLING AND JAMES D. SCHNELLER

ORDER

PER CURIAM

AND NOW, this 21st day of April, 2010, the Application for Reconsideration is DENIED.

BEFORE THE PENNSYLVANIA
GAMING CONTROL BOARD

FILED
SEP -2 2009
44047
Board Clerk PGCB

IN RE: PHILADELPHIA
ENTERTAINMENT AND
DEVELOPMENT PARTNERS, L.P.

PGCB Docket
No. 1367

Eastern Pennsylvania Citizens Against
Gambling and James D. Schneller,
Petition to Intervene

ADJUDICATION

This matter is before the Board for disposition of Eastern Pennsylvania Citizens Against Gambling and James D. Schneller's ('Eastern/Schneller") July 7, 2009 Petition to intervene in Philadelphia Entertainment and Development Partners, L.P., d/b/a Foxwoods Casino Philadelphia's ("Foxwood's") May 22, 2009 Petition to Extend Time to Make Slot Machines Available ("Petition for Extension of Time").

After a review of the relevant filings in this matter, the Board makes the following findings.

Findings of Fact

1. The Board awarded Foxwoods one of the two available Category 2 Slot Machine Licenses for the City of Philadelphia ("License" or Philadelphia License") on December 20, 2006; the Board issued the License on May 28, 2009.

2. Foxwoods' proposal included, inter alia, plans to build a slot machine casino facility at Columbus Boulevard, between Reed and Tasker Streets, on the South Philadelphia waterfront ("Columbus Boulevard Site") .

3. Foxwoods filed a Petition for Extension of Time on May 22 2009.

4. On July 7, 2009, Eastern/Schneller filed a Petition to Intervene in the above-captioned matter in which they make numerous broad averments and assertions including but not limited to :

a. They represent the interest of "numerous subclasses of residents";

b. Foxwoods' proposed casino will cause an intrusion on the lives of tens of thousands of Philadelphians;

c. Foxwoods' proposed casino will siphon from the local and regional business economy;

d. Foxwoods' proposed casino is incompatible with the Delaware River waterfront plan;

e. Foxwoods was aware of the level of contention that would arise relative to the proposed location of its casino; and

f. Casinos, in general, are havens of crime.

5. The Board's Office of Enforcement Counsel ("OEC") filed an Answer and New Matter to Eastern/Schneller's Petition to Intervene on July 16, 2009 in which it objects to the Board granting Eastern/Schneller's Petition.

6. Foxwoods filed an Answer and Opposition to Eastern/Schneller's Petition to Intervene on July 17, 2009.

Conclusions of Law

1. The Board has jurisdiction over the parties and the subject matter of the instant proceeding.

2. It is within the Board's discretion to grant a Petition to Intervene if it determined that the petitioner:

a. has an interest in the proceeding which is substantial, direct and immediate;

b. the interest is not adequately represented by a party to the proceeding; and

c. the petitioner may be bound by the action of the Board in the proceeding.

3. A petition to intervene must be in writing and set out clearly and concisely the facts demonstating the nature of the alleged right or interest of the petitioner, the grounds of the proposed intervention, and the position of the petitioner in the proceeding. The petitioner shall fully advise the parties and the Board of the specific issues of fact or law to be raised or controverted, by admitting, denying or otherwise answering, specifically and in detail, each material allegation of fact or law asserted in the petition or complaint initiating the proceeding, and citing by appropriate reference provisions or other authority relied on.

4. Eastern/Schneller are not entitled to intervene in the proceedings regarding Foxwoods' petition for extension of time as they do not have the requisite interest nor do they dearly and concisely set out facts demonstrating any interest other than arguing the abstract interest of all citizens.

Discussion

Standing to participate before an administrative agency is within the discretion of the agency. l Pa. Code §35.9 and 58 Pa. Code § 493a.12(e). The Board's Regulations direct that the Board, in its discretion, may grant a petition to intervene if (1) the petitioner has a substantial, direct and immediate interest in the proceeding that (2) is not adequately represented by a party to the proceeding and (3) the petitioner may be bound by the action. of the Board in the proceeding. 58 Pa. Code §493a. 12(a) and (c).

The Supreme Court of Pennsylvania has determined that a person's interest is "direct" if the person can demonstrate "causation of the harm to his/her interest by the matter of which he/she complains"; a person's interest is "immediate" if the person demonstrates a close causal nexus between the alleged harm and the challenged action; and, a. person's interest is "substantial" if "there is some discernible adverse effect to some interest other the abstract interest of all citizens." William Penn Parking Garage, Inc. v. City of Pittsburgh, 346 A.2d 269 (1975) and Citizens Against Gambling Subsidies, Inc. V Pa. Gaming Control Bd., 916 A.2d 624 (2007).

The Board's Regulations further direct that a

"petition to intervene must be in writing and set out clearly and concisely the facts demonstrating the nature of the alleged right or interest of the petitioner, the grounds of the proposed intervention and the position of the petitioner in the proceeding. The petitioner shall fully advise the parties and the Board of the specific issues of fact or law to be raised or controverted, by admitting, denying or otherwise answering, specifically and in detail, each material allegation of fact or law asserted in the petition. or complaint initiating the proceeding and citing by appropriate reference provisions or other authority relied on." 58 Pa. Code § 493a.12(e).

Here, Eastern/Schneller's Petition to Intervene claims its interest is "substantial, direct and immediate;" "not adequately represented;" and "that it and millions of affected citizens will be bound" by the Board's decision in the Foxwoods matter. However, the Petition does not "set out, clearly and concisely, the facts demonstrating the nature of the alleged interest." Instead, the Petition, inter alia, enumerates Eastern/Schneller's opposition to gambling in general and within the City of Philadelphia specifically; as well as alleges that the Gaming Act, the Board and the Board's Regulations are flawed.

Additionally, the Petition does not "fully advise the parties and the Board of the specific issues of

fact or law to be raised or controverted, by admitting, denying or otherwise answering, specifically and in detail, each material allegation of fact or law asserted in the petition . . . citing by appropriate reference provisions or other authority relied on." While the Petition attempts to "controvert" some of the issues raised in Foxwood's Petition for Extension of Time, Eastern/Schneller fails to provide any support for its varied and numerous assertions.

Having failed to meet nearly every element of the intervention requirements in Section 493a.12 of the Board's Regulations 58 Pa. Code § 493a.12(a) and (e), Eastern/Schneller is not entitled to intervene in the proceedings regarding Foxwoods' Petition for Extension of Time.

Dated: September 1, 2009

By: _____/s/_____ Gregory C. Fajt, Chairman
Pennsylvania Gaming Control Board

If you disagree with the Board's Adjudication and Order, you have the right to file an appeal with the Commonwealth Court of Pennsylvania within thirty (30) days of the dare of this Order. See, Pennsylvania Rule of Appellate Procedure 1512.

BEFORE THE PENNSYLVANIA
GAMING CONTROL BOARD

FILED
SEP -2 2009 44047
Board Clerk PGCB

IN RE: PHILADELPHIA ENTERTAINMENT AND DEVELOPMENT PARTNERS, L.P.

PGCB Docket
No. 1367

Eastern Pennsylvania Citizens Against Gambling and James D. Schneller,
Petition to Intervene

ORDER

AND NOW, this 1st day of September 2009, for the reasons stated in the Board's Adjudication of this date, thc Board hereby DENIES Eastern Pennsylvania Citizens Against Gambling and James D. Schneller's July 7, 2009 Petition to Intervene in Philadelphia Entertainment and Development Partners, L.P.'s May 22, 2009 Petition to Extend Time to Make Slot Machines Available.

By: _____/s/_____ Gregory C. Fajt, Chairman
Pennsylvania Gaming Control Board

If you disagree with the Board's Adjudication and Order, you have the right to file an appeal with the Commonwealth Court of Pennsylvania within thirty (30) days of the dare of this Order. See, Pennsylvania Rule of Appellate Procedure 1512.